

IN THE WAITANGI TRIBUNAL

**WAI 898
WAI 1439 WAI 2353 WAI 2352
WAI 2351 WAI 1112 WAI 1113**

IN THE MATTER of The Treaty of Waitangi Act 1975
(as amended)

- AND** Claims in Te Rohe Pōtae Inquiry consolidated under Wai 898
- AND** the Wai 1112 claim by Manihera Forbes, Marlene Pikia Edwards, and Tiriata Thorne on behalf of themselves and Ngāti Hikairo
- AND** the Wai 1113 claim by Manihera Forbes, Marlene Pikia Edwards, and Tiriata Thorne on behalf of themselves and Ngāti Hikairo
- AND** the Wai 1439 claim by John Pouwhare on behalf of the Ōpārau Station Trust
- AND** the Wai 2351 claim made by Frank Kīngi Thorne for and on behalf of himself and for the benefit of Ngāti Hikairo
- AND** the Wai 2352 claim made by Pipi Barton for and on behalf of herself and her whānau, all of Ngāti Hikairo
- AND** the Wai 2353 claim by Hinga Whiu on behalf of herself and the Hōnerau Tai Hauāuru Whānau Trust

**CLOSING SUBMISSIONS
APPENDIX A: RESPONSES TO STATEMENT OF ISSUES
FOR NGĀTI HIKAIRO
DATED THE 22nd DAY OF OCTOBER 2014**

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APPENDIX A:

Responses on Ngāti Hikairo to the Waitangi Tribunal Statement of Issues

1. This Appendix of responses to the Statement of Issues is made on behalf of the Wai 1112, Wai 1113, Wai 2351, Wai 2352, Wai 2353, and Wai 1439 claims.
2. Counsel adopt the various claimant counsel generic submissions on answers to the Statement of Issues and say further in relation to Ngāti Hikairo.

6. LOCAL GOVERNMENT

6.1 What was the extent of Rohe Pōtae Māori self-government at the time the Crown introduced local government into the inquiry district?

3. Ngāti Hikairo exercised complete rangatiratanga and kaitiakitanga over its area of interest both rohe whenua and rohe moana.

6.2 To what extent did the Crown owe to Rohe Pōtae Māori a duty to protect their self government when local government was introduced into the inquiry district?

4. The Crown owed Ngāti Hikairo a duty under Te Tiriti to protect its ability to carry out its rangatiratanga and kaitiakitanga over its area of interest both rohe whenua and rohe moana.

6.3 What views did Rohe Pōtae Māori express regarding the introduction of local government in the district? How did the Crown respond to those views?

5. Counsel submit that Ngāti Hikairo continued to try and exercise its rangatiratanga and kaitiakitanga over its area of interest both rohe whenua and rohe moana. The Crown ignored those views with the introduction of laws regulating the management of the whenua and the moana and its system of land tenure.

6.4 Did local government negatively affect Rohe Pōtae Māori self-government in the inquiry district? If so, how?

6. Counsel submit that Ngāti Hikairo has suffered from the lack of acknowledgement of its rangatiratanga and kaitiakitanga over its area of interest both rohe whenua and rohe moana. The evidence of Frank Thorne, Pipi Barton, Mere Roberts, Jack Cunningham and Tony Spelman set out examples of this from the time of the signing of Te Tiriti until the present day.

6.5 What calls, if any, have Rohe Pōtae Māori made for self-government after the imposition of local government, particularly in the last few decades?

7. Counsel submit that Ngāti Hikairo has attempted to have local government agencies engage with it as an iwi with limited success. The evidence of Frank Thorne, Pipi Barton, Mere Roberts and Tony Spelman set out examples of this in particular in relation to local government .

6.6 Has the Crown taken appropriate steps to enable Rohe Pōtae Māori to participate in local government in the inquiry district? In particular:

(b) What provision has been made for Rohe Pōtae Māori to have direct representation in local government?

8. Counsel submit that whilst local government legislation provides for individual Māori wards at local government level, whereby an individual could be elected, of which there are none in the Inquiry district, this is not the same as the partnership promised between Crown and Ngāti Hikairo under Te Tiriti. No evidence of this has been presented and counsel submit that attempts by Ngāti Hikairo for any form of relationship or engagement as an iwi with local government in its rohe is met with limited or no success

7. TIKANGA

7.1 To what extent has legislation, policy and practices of the Crown undermined or destabilised tribal leadership structures of Rohe Pōtae Māori?

9. Crown legislation, policy and practices in regards to tikanga, and with respect of ownership and management of the land and the sea and the resources contained therein undermined and destabilised the traditional leadership structures of Ngāti Hikairo as described in the Ngāti Hikairo evidence. As set out in the evidence of Frank Thorne, Pipi Barton, Mere Roberts. Jack Cunningham and Tony Spelman, Ngāti Hikairo has been prevented from carrying out environmental management despite its best efforts thereby undermining the traditional leadership roles of the iwi.

10. THE NATIVE LAND COURT

10.1 In establishing the Native Land Court in the inquiry district how well did the Crown:

(c) Consider a range of land tenure options for Rohe Pōtae Māori?

10. The claimants submit that the Crown preferred alienation by transfer of the freehold rather than considering lesser forms of interest, such as leasing or licences, as set out in *Te Maru-ō-Hikairo* in relation to the public works taking of Mangauika block. Further it is submitted that where Ngāti Hikairo understood land awarded to individuals as an award to them as Trustees for the iwi, the Crown ignored that view and preferred the view that enabled alienation, for example the evidence in respect of Paretao Eel Reserve.

(d) Try to understand and account for customary Rohe Pōtae Māori land tenure and related processes and practices?

11. Counsel submit as per 10.1.(c) above

10.2 Did the Native Land Court's processes and outcomes affect traditional processes and practices of Rohe Pōtae Māori? If so, how? In particular

(c) The range of customary rights and interests including shared, overlapping and usufructuary rights?

12. The claimants submit that the Native Land Court process and outcomes removed from Ngāti Hikairo its ability to carry out any of its obligations and rights under tikanga, including to protect the land and resources, occupy the land and to be able to utilize the resources on the whenua or develop them and to engage with other iwi and hapu in respect of reciprocal rights.

(e) The compatibility of survey boundaries with customary interests in land?

13. The claimants submit there was no compatibility of survey boundaries with customary interests in land. As noted in the Tribunal's *Ngati Awa Raupatu* Report, Māori do not operate within state-like boundaries, rather there are overlapping interests based upon whakapapa and use rights over land.

10.3 What avenues did the Crown provide for Rohe Pōtae Māori to express concerns about the impacts of the Native Land Court's processes on tikanga? Did Rohe Pōtae Māori use these avenues to express concerns? If so, how did the Crown respond to these concerns?

14. The claimants submit that the Crown provided only the instruments of Pākehā law, many of which Rohe Pōtae Māori and Ngāti Hikairo utilised to express their concerns, but in the main to no avail. It is submitted that the historical reports are replete with references to petitions and letters which are ignored.

10.21 What prejudice, if any, did Rohe Pōtae Māori suffer as a consequence of the Native Land Court? In particular:

(c) What was the impact of fragmentation and individualisation of title?

15. Counsel submit that the fragmentation and individualisation of title contributed to the inability of Ngāti Hikairo to carry out its tino rangatiratanga and kaitiakitanga. The flow chart examples of Kāwhia and Pirongia West title partitioning provided in the evidence of Frank Thorne demonstrate significant fragmentation and fractionalisation (#N53(b))

(e) What was the effect, if any, on tikanga?

16. Counsel submit that the Native Land Court contributed to the inability of Ngāti Hikairo to carry out its tino rangatiratanga and kaitiakitanga .

12.5 d) Did the Crown adequately monitor the impact of Crown purchasing on Rohe Pōtae Māori? In particular:

- i. The sufficiency and value of remaining lands?**
- ii. The developmental potential and accessibility of remaining lands?**
- iii. The pace and scale of Crown purchasing?**

17. Counsel are not aware of evidence that the Crown monitored the impact of Crown purchasing on Ngāti Hikairo. The Stout Ngata Commission of 1907 reviewed the overall landholdings of Māori of Te Rohe Pōtae and made recommendations for the vesting of Māori land in relation to farming and settlement, but was very poorly acted upon by the Crown, if at all.¹ In addition Dr Hearn gave evidence that there was nothing in the correspondence to indicate whether the Waikato-Maniapoto Maori Land Board had considered whether the owners had sufficient other lands, before

¹ Hearn, #A73(b), paras 5.1-3

approving Crown purchases of the Pirongia West block in 1912 and 1913.²

18. The sheer scale of the purchasing in the Pirongia West and Mangauika blocks within around a decade demonstrates that the Crown's purchasing occurred at a significant pace. For example, around 62% of the Pirongia West block was sold by Crown purchase within a five year period (about 1895 to 1900) and about 59% of the Mangauika block was sold to the Crown between 1894 and 1910.
19. The Crown was on notice that there may be an issue with the sufficiency of land for Ngāti Hikaio. A Native Land Court hearing in 1897 on a Pirongia West transaction queried whether Ngāti Hikairo would be left with sufficient lands.
20. The context for these Crown purchases was that the iwi had just lost about half of their lands to confiscation. In addition, the location of the Crown partitions would effectively push Ngāti Hikairo further from their Waipā and Pirongia lands and concentrate their people around Kāwhia.
21. Ngāti Hikairo have given evidence in relation to issues with accessibility for various land-locked blocks held in their ownership.³

13.4 Did the Crown consult with Rohe Pōtae Māori concerning native townships? If so, what was the nature and extent of that consultation? In particular:

(a) What was the nature of any consent Rohe Pōtae Māori gave to the establishment of native townships, and how did the Crown obtain it?

22. Hōne Kaora and others petitioned the Crown for support to expand Kāwhia township onto their lands. They saw opportunities for commerce and cooperation with the Crown, but they were clear that they did not want a Native Township at Kāwhia. Despite this clear position, the Crown took these requests for assistance as voluntary consent to establish a Native Township. Hōne Kaora protested to the Premier and others of Ngāti Hikairo have consistently said that they never gave consent.⁴ Most unfortunately, Hōne Kaora would within 10 years write to the Crown seeking half of the township rentals as his whānau were short of food. It is accepted that the Crown did create a Township survey plan and publicly exhibit it at Kāwhia.

² Hearn, #A73, pp 501, 605

³ See for example, Pokaia, #N36; Kewene, #N33

⁴ Bassett #A62(b), p3

13.11 Did Rohe Pōtae Māori suffer any other prejudice as a result of native townships?

23. The Crown took almost complete control over their lands of the Ngāti Hikairo owners of the Kārewa and Te Puru Township. The Crown didn't set aside enough of the Township lands as reserves for the use of Ngāti Hikairo, despite requests for more lands. The Crown took 35% of Te Puru Township for roads and public reserves and in Kārewa Township almost a third of the lands were laid off as roads. All of these roads and reserves were taken without paying compensation to the Ngāti Hikairo owners. The Crown failed to protect Ngāti Hikairo's wāhi tapu and other special sites within the Townships such as springs, a swamp, tomo and sacred Pōhutukawa. The loss of the Pōhutukawa was despite an express condition being made that the Crown was to protect them and despite the Pōhutukawa being marked clearly on the survey plan.

Conversion (uneconomic interests and live-buying)

15.24 To what extent did the conversion of interests benefit or prejudice Rohe Pōtae Māori?

In particular:

(a) How much land, and at what value, was acquired from Rohe Pōtae Māori?

(b) How much land or interests in land has the Crown or the Māori Trustee retained from conversion?

(c) How much land was redistributed to other Rohe Pōtae Māori owners and at what cost to them?

(d) What was the impact on relationships between those who retained or acquired interests and those whose interests were acquired?

(e) What was the impact on succession arrangements? In particular, to what extent did the risk that succession to interests would give rise to uneconomic interests, lead to family arrangements that excluded some eligible successors?

24. The Māori Trustee, from 1968, purchased the following "uneconomic interests" from Ngāti Hikairo lands:⁵

⁵ Bassett & Kay, #A75, p411

Block	Purchased by agreement	Purchased by agreement	Compulsory Purchase	Compulsory Purchase
	Shares	Amount	Shares	Amount
Kāwhia M2P11	0	0	0.1593	\$102.98
Kāwhia M2P12	7.7591	\$621.69	0	0
Kāwhia R2C1B	56.2734	\$528.43	108.6862	\$386.54
Kāwhia T2s2B2B	38.1197	\$92.68	0	0
Kāwhia T2s4B2	1.1000	\$1,944.49	.7995	\$138.40
Kāwhia W2B	1.6666	\$111.07	0	0
Mangauika 1	0.0250	\$0.36	0.0375	\$0.54

Europeanisation of Māori land

15.33 Did the Europeanisation of Rohe Pōtae Māori land benefit or prejudice Rohe Pōtae Māori? If so, to what extent? In particular:

(a) How much land was Europeanised?

(b) How much of the Europeanised land was subsequently sold?

(c) How much of the Europeanised land has been the subject of rating sales?

(d) To what extent were successions to the Europeanised land affected by its status as general land?

(e) What other disadvantages arose because the Europeanised land could not be dealt with as Māori land?

25. According to Bassett, around 1,725 out of 51,277 acres awarded to Ngāti Hikairo outside the confiscation district were “Europeanised” between 1968 and 1973 (figures are in acres):⁶

Block	Area acres	Europeanised
Kāwhia	5,373	649
Pirongia West	36,289	594
Motukōtuku	198	65

⁶ Based upon Douglas *et al*, #A21; Berghan #A60

Block	Area acres	Europeanised
Waihōhonu	1,093	0 ⁷
Kaipiha	1,977	317
Mangauika	5,473	100
Totals	51,277	1,725

26. The evidence in the Pirongia West and Kāwhia block case studies analysed by Mr Thorne, most of the “Europeanised” lands of Ngāti Hikairo had been alienated.⁸ One example of land still owned by Māori having been “Europeanised” was discovered in the course of the preparation of evidence for this inquiry.⁹

16.2 To what extent were Rohe Pōtae Māori consulted about the land development schemes established in the district? In particular, in respect of each development scheme:

- (a) To what extent were individual owners consulted?**
(b) Did Rohe Pōtae Māori understand the implications of the land development schemes, in particular in terms of alienation from land and suspension of ownership interests?
(c) Did the Crown make representations to Rohe Pōtae Māori about positive economic and/or social outcomes? If so, were those representations met? If those representations were not met, why not?
(d) To the extent that the land development schemes changed, were Rohe Pōtae Māori adequately consulted?
(e) What prejudice, if any, did Rohe Pōtae Māori suffer?

27. In relation to the Ōpārau Land Development Scheme the evidence points to a single hui at Ngaruawahia over two days in December 1954. There is no other evidence of consultation in relation to the establishment of the Scheme. There is no evidence on the record as to what was discussed at that meeting nor whether the Scheme terms were outlined. At the time, the land was under the administration of the Māori Trustee.

28. The evidence of the claimants in relation to the Ōpārau Land Development Scheme was that the Crown failed to adequately consult with the owners in relation to changes within the development scheme or for that matter any of the management of the scheme itself. There is evidence that the owners were

⁷ There may well have been “Europeanisation” of lots within the Waihohonu Block, Berghan, #A60, pp 1169-70 lists as “European” Waihohonu 6, 12, & Roads blocks (a total of 130 acres)

⁸ Thorne, #N53, p9

⁹ Pōrima, #N29, pp 7-7; #N29(a)

unaware that the Crown had decided to purchase more land to add to the scheme and that additional debt would be loaded onto the scheme as a consequence. The owners received a large debt upon the return of the lands to them.

16.4 Was the implementation of the land development schemes that were established in the district fair and beneficial to Rohe Pōtae Māori? In particular:

(a) What Crown agencies implemented the land development schemes?

29. The evidence is that the Department of Māori Affairs implemented the Ōpārau Land Development Scheme.

(c) To what extent did the implementation of the land development schemes suspend or interfere with Rohe Pōtae Māori interests, including cultural associations with the land?

30. The Ngāti Hikairo evidence is that the Crown failed to provide for their practical and legal access to part of the Ōpārau Land Development Scheme lands (Tiritirimatangi) and area which is of strong cultural importance to the iwi.

(g) To what extent did the land development schemes provide skills training, employment and other economic benefits for owners?

31. The Ngāti Hikairo evidence is that few jobs were provided to local Māori during the Ōpārau Land Development Scheme. The evidence was also that little or no income was received by the owners during the Crown management.

(i) To what extent were the owners consulted in relation to the ongoing administration of the land development schemes?

32. The witnesses gave strong evidence that they had little or no say in the management of their lands and that Crown consultation with the owners was almost non-existent. The witnesses only referred to poorly attended AGMs.

(j) How well were the land development schemes established in the district financially managed?

i. Was the Crown reasonable in planning for and committing levels of development expenditure against land?

ii. Did the Crown take unnecessary risks in attempting to develop some land for pastoral farming given the topography and profile of the land?

iii. Was the return of land delayed unreasonably because of high debt levels?

iv. In what circumstances did the Crown write-down or write-off debt?

33. The Ngāti Hikairo evidence was that while the Crown wrote-off some debt there was still significant debt attached to the land at handover after over 35 years of Crown management. They also gave evidence that the land was in a poor state and had water reticulation, fencing, pasture, and weed problems.

(k) To what extent did the land development schemes improve the management capacity of the owners?

34. There is no Ngāti Hikairo evidence of any assistance provided to the owners in relation to management capacity for the Ōpārau Station.

16.5 Were the land development schemes established in the district successful? In particular:

(e) Was the land returned in a reasonably developed state? Was the debt level reasonable?

35. As noted above, the Ngāti Hikairo evidence is that the land was returned in a poor state having problems with pasture, fencing, water supply and reticulation, and weeds. Also, there were problems left to the new owners in relation to legal and practical access to part of the Ōpārau Land Development Scheme lands.

(f) Did the land development schemes give rise to adverse effects on the environment, wāhi tapu, urupā and other taonga sites?

36. As noted above, Ngāti Hikairo have given evidence that they do not have legal nor practical access to part of the Ōpārau Land Development Scheme lands (Tiritirimatangi) and that this is a particularly sacred area of land. They also noted that during the management of the land by the Crown a sacred taonga (Taumata Atua) was lost from the land and taken to a museum.

16.8 What was the extent of the Māori Trustee's involvement in land development schemes? In particular:

- (a) What was the extent of consultation with owners about the Māori Trustee's involvement in land development schemes?**
(b) What role did the Māori Trustee play in land development schemes in addition to its role in vested lands and conversion?
(c) To what extent was the Māori Trustee able to appropriate money owed to owners? Was that reasonable?

37. The evidence is incomplete in relation to the Māori Trustee's involvement with the Ōpārau Land Development Scheme, except, as noted above, the land had been under the administration of the Māori Trustee at the time that it was included in the scheme.

16.9 Did Rohe Pōtae Māori suffer prejudice as a result of the implementation of the land development schemes? If so, what was the extent of that prejudice?

38. The prejudice suffered by the owners of the Ōpārau Land Development Scheme lands included:
- i. The complete loss of management of their lands for over 35 years.
 - ii. Receiving a debt of \$111,600 on return of the land in 1989-90.
 - iii. Having no practical legal access to part of the Scheme lands (Tiritirimatangi) and having to initiate legal proceedings to provide for this.
 - iv. Receiving back land in a poor state – having issues with the pasture, fencing, water reticulation and supply, and weeds.

17.1 In acquiring Rohe Pōtae Māori land for public works:

(a) How extensively did the Crown apply the 5-percent rule in the inquiry district which, from 1865 to 1927, allowed the Crown to take up to five per cent of a block for roads without compensation? How much Rohe Pōtae Māori land was taken under the 5-percent rule compared with non-Māori land? Did the 5-percent rule affect Rohe Pōtae Māori differently from non-Māori in the district?

39. The Crown took approximately 18 acres of Ngāti Hikairo's lands for roads under the "five percent" provisions and therefore without payment of compensation

17.1 (c) To what extent did the Crown local bodies or other bodies with the power to acquire land compulsorily, consult with land owners? To what extent did land owners object or agree to particular takings?

40. In the case of the Ōpārau School takings the Crown did consult with the Moke whānau of Ngāti Hikairo. The whānau consistently protested on the basis that they wish to retain the land of their forebears. The Moke whānau consistently objected through the cases of three separate takings for the school lands.

17.1 (e) Did the Crown, local bodies or other bodies with the power to acquire land compulsorily, explore the taking of lesser interests such as leasehold interests or easements and so forth?

41. In the evidence of Mr Moke, he specifically asked why the Crown had not considered some other arrangement other than simply taking the land for the Ōpārau School. He queried why the Crown has not considered simply leasing the land from his whānau. No

other options appear to have been considered by the Crown at the time.¹⁰

17.2 How did the Crown respond to Rohe Pōtae Māori opposition to public works takings?

42. In 1943 the Moke whānau objected to the Crown's intention to take more of their land for the Ōpārau School because of their desire to retain the land of their forbears. The response of the Auckland Education Board was to comment that "*If this site is the home of their forebears, they are apparently going back a very long way, as we can find no old resident who remembers this family living on the site*".¹¹ It is submitted that the Board's comment displays an ignorance of the importance of land to Māori and the antiquity of connection to the whenua.

17.7 In terms of surplus land:

(b) Did the Crown offer surplus land to the original owners? Did the owners take up the offers? If not, why not?

43. The Moke whānau were offered the Ōpārau School lands through the Public Works offer-back process, but they were unable to purchase the lands given that the offer to the whānau was to purchase the land and its improvements for no less than \$300,000.¹² Mr Moke noted that the offer-back included the improvements which were "*somewhat derelict*" buildings. The whānau only wanted to purchase the land, but the Crown would not entertain that possibility.¹³

19.1 What was the extent of alienation of Rohe Pōtae Māori land in the twentieth century outside of the periods and issues already addressed? In particular:

- (a) Negotiated purchases by the Crown;**
- (b) Private purchasing;**
- (c) Sales of landlocked land; and**
- (d) Long-term leases.**

44. The majority of Ngāti Hikairo's lands were lost to confiscation in Waikato and to a series of Crown purchase transactions in the Pirongia West and Mangauika blocks in the periods to about 1910. There has been a steady, albeit relatively small, loss of Ngāti Hikairo lands through private purchases from about 1910 onwards in the remaining blocks.¹⁴

¹⁰ Moke, #N37, p8

¹¹ Alexander #A63, pp 206-7; #A63(a), reference 1937

¹² *Te Maru-ō-Hikairo*, #A98, p313

¹³ Moke, #N37, p8

¹⁴ See Douglas *et al*, #A21, Appendix 7, Kāwhia and Pirongia West blocks; Thorne, #N53(b)

19.6 To what extent did the Crown ensure that Rohe Pōtae Māori retained sufficient land for their present and future needs?

45. Ngāti Hikairo have given evidence that there is not enough land for their present and future needs. The evidence demonstrates that the Crown first took half of their rohe by confiscation and then purchased a further half of their remaining lands over a short period from about 1895 to 1910.

19.7 What lands have Rohe Pōtae Māori retained?

46. Ngāti Hikairo has retained around 10,000 acres in largely individual ownership, mainly around the Kāwhia region. Very little land remains in the Waipā and Pirongia regions with about only 97 acres retained to the east of Pirongia within the confiscation zone.

20. ENVIRONMENTAL ISSUES

20.1 What was the extent of Rohe Pōtae Māori engagement with natural resources in the district in 1840? Which natural resources in the district were particularly important to Rohe Pōtae Māori?

47. Ngāti Hikairo has tino rangatiratanga and kaitiakitanga over all the whenua, awa and Moana. In their claim and evidence the people of Ngāti Hikairo say these are an undivided entity or single whole that cannot be divided into adjacent lands and catchments, springs, pools, banks, beds and waters. Therefore they include in respect of the awa and Moana all of the adjacent lands and catchments, beds, and foreshores, streams, rivers, tributaries, riverbeds, riverbanks, springs, waters, swamps, flora, fauna (including fisheries), minerals, and resources. In respect of the whenua they include the minerals, and resources and rights to occupy, use and develop.

20.2 What were Rohe Pōtae Māori tikanga in relation to use, possession and care of whenua, ngahere, wai, awa, roto and fisheries?

48. Ngāti Hikairo submit that its tikanga are as set out in evidence throughout *Te Maru-ō-Hikairo* (#A98) and linked to its whakapapa, history and association with the whenua, the moana and the associated resources, establishing its mana motuhake, mana whenua, and mana whakahaere in its rohe.

20.3 Did the introduction of statute law and common law cause tensions or conflict with Māori customary law, tikanga and kaitakitanga in relation to the environment and natural resources?

49. The claimants submit that statute law and common law the Ngāti Hikairo was completely in conflict with Ngāti Hikairo tikanga and kaitakitanga in respect of the environment and natural resources.

In particular:

(a) Was there any effect on Rohe Pōtae Māori's ownership, if any, of natural resources?

50. The claimants submit that Crown legislation, policies and practice have worked and continue to work to alienate Ngāti Hikairo from its customary ownership of natural resources.

(b) Was there any effect on Rohe Pōtae Māori's rights, if any, to manage the environment and natural resources?

51. The claimants submit that Crown legislation, policies and practice have worked and continue to work to alienate Ngāti Hikairo from its rights and obligations under kaitiakitanga in respect of natural resources.

20.4 What Treaty duties does the Crown have in relation to the environment? In particular, what duty does the Crown have to protect Rohe Pōtae Māori relationships with the environment and tikanga?

52. The Crown was under an obligation pursuant to the Treaty to actively protect the environment as a taonga of Ngāti Hikairo. The Crown has seriously failed in this regard as set out in the evidence of the Ngāti Hikairo in particular the evidence of Frank Thorne, Pipi Barton, Jack Cunningham, Gerrit Vantol and Whetu Simon, Mere Gilmore, Mere Roberts, Manaoterangi Forbes and Tom Moke.

20.5 Have legislation, and policies and practices of the Crown, contributed to environmental degradation of land in the inquiry district? If so, how?

53. The claimants submit that legislation, and policies and practices of the Crown, contributed to environmental degradation of land as set out in the evidence presented by Ngāti Hikairo. The claimants submit that the once abundant sea, together with rich freshwater and forest life have been decimated as a result of a variety of Government initiatives, land confiscation, pollution and a general failure to recognise and work with the mana whenua of Ngāti Hikairo.

20.6 Have Rohe Pōtae Māori expressed concern about the environmental degradation of the land?

54. The claimants submit that they have expressed concern in many fora about the environmental degradation of the land.

If so, has the Crown's response been adequate?

55. The claimants submit that the Crown response has been inadequate, in particular as set out in the evidence of Tony Spelman, Pipi Barton, Frank Thorne and others, that Ngāti Hikairo has not been acknowledged as an iwi and therefore as not having its association with the land and sea and resources in its rohe recognised .

20.7 How has the Crown delegated authority concerning the environmental management of the land? In particular:

(a) To what bodies?

56. To central government agencies and to local government and in some cases to mandated iwi authorities, in respect of the Waipā awa for example, which excludes Ngāti Hikairo.

(b) What provision was made for Rohe Pōtae Māori interests?

57. The claimants submit that no provision has been made for Ngāti Hikairo interests, with the Crown or its agents preferring to deal with mandated iwi authorities or the "closest marae concept" as Frank Thorne puts it in his evidence.

(c) What consultation occurred with Rohe Pōtae Māori?

58. The claimants submit that the Crown and in the main local government refuse to acknowledge Ngāti Hikairo's iwi status and whilst in some cases, there has been acknowledgement at a low level engagement (eg. Otorohanga District Council in respect of cultural heritage management), this does not translate to consultation at all levels of environmental management.

(d) Has this management had any detrimental effects on the land or on Rohe Pōtae Māori's relationship with the land?

59. The claimants submit that the once abundant sea, together with rich freshwater and forest life have been decimated as a result of a variety of Government initiatives, land confiscation, pollution and a general failure to recognise and work with the mana whenua of Ngāti Hikairo and had a corresponding effect on Ngāti Hikairo's relationship thereto.

20.8 What is the current environmental state of the land in the district? What are the current environmental management regimes initiated by the Crown in respect of land and how are Rohe Pōtae Māori included?

60. The claimants submit that the once abundant sea, together with rich freshwater and forest life have been decimated as a result of a variety of Government initiatives, land confiscation, pollution and a general failure to recognise and work with the mana whenua of Ngāti Hikairo.

20.9 Have legislation, policies and practices of the Crown contributed to environmental degradation of indigenous forests in the inquiry district? If so, how?

61. The claimants submit that legislation, and policies and practices of the Crown, contributed to environmental degradation of land as set out in the evidence presented by Ngāti Hikairo. The claimants submit that the forest life have been decimated as a result of a variety of Government initiatives, land confiscation, pollution and a general failure to recognise and work with the mana whenua of Ngāti Hikairo.

20.10 Have Rohe Pōtae Māori expressed concern about the environmental degradation of indigenous forests?

62. The claimants submit that they have expressed concern in many fora about the environmental degradation of the land.

If so, has the Crown's response been adequate?

63. The claimants submit that the Crown response has been inadequate, in particular as set out in the evidence of Tony Spelman, Pippa Barton, Frank Thorne and others, that Ngāti Hikairo has not been acknowledged as an iwi and therefore as not having its association with the land and sea and resources in its rohe recognised .

20.11 How has the Crown delegated authority concerning the environmental management of indigenous forests?

(a) To what bodies?

64. To central government agencies in respect of those on Crown land.

(b) What provision was made for Rohe Pōtae Māori interests?

65. The claimants submit that no provision has been made for Ngāti Hikairo interests, with the Crown or its agents preferring to deal with mandated iwi authorities or the "closest marae concept" as Frank Thorne puts it in his evidence.

(c) What consultation occurred with Rohe Pōtae Māori?

66. No consultation has occurred with Ngāti Hikairo as set out in Frank Thorne's evidence.

(d) Has this management had any detrimental effects on indigenous forests or on Rohe Pōtae Māori's relationship with indigenous forests?

67. The claimants submit that the once abundant forest life has been decimated as a result of a variety of Government initiatives, land confiscation, pollution and a general failure to recognise and work with the mana whenua of Ngāti Hikairo and had a corresponding effect on Ngāti Hikairo's relationship thereto.

20.12 What are the current environmental management regimes in respect of indigenous forests and how are Rohe Pōtae Māori included? What is the current environmental state of indigenous forests in the district?

68. The claimants submit that there has been a general failure to recognise and work with the mana whenua of Ngāti Hikairo in relation to environmental management of forest life and as a result of a variety of Government initiatives, land confiscation, pollution and they have been decimated.

Waterways

20.13 Have legislation, policies and practices of the Crown contributed to environmental degradation of waterways in the inquiry district? If so, how? In particular, what effects, if any, have drainage schemes and the introduction of exotic species had?

69. The claimants submit that the once abundant sea, together with rich freshwater and forest life have been decimated as a result of a variety of Government initiatives, land confiscation, pollution and a general failure to recognise and work with the mana whenua of Ngāti Hikairo and had a corresponding effect on Ngāti Hikairo's relationship thereto.

20.14 Have Rohe Pōtae Māori expressed concern about the environmental degradation of waterways?

70. The claimants submit that they have expressed concern in many fora about the environmental degradation of the waterways.

If so, has the Crown's response been adequate?

71. The claimants submit that the Crown response has been inadequate, in particular as set out in the evidence of Tony Spelman, Pipi Barton, Frank Thorne and others, that Ngāti Hikairo has not been acknowledged as an iwi and therefore as not having its association with the land and sea and resources in its rohe recognised .

20.15 How has the Crown delegated authority concerning the environmental management of waterways? In particular, regarding the Mangapiko and Waitomo Streams, the Waipā River and their tributaries:

(a) To what bodies?

(b) What provision was made for Rohe Pōtae Māori interests?

(c) What consultation occurred with Rohe Pōtae Māori?

72. To central government agencies and to local government and in some cases to mandated iwi authorities, in respect of the Waipā awa and its tributaries for example, which excludes Ngāti Hikairo and in respect of which Ngāti Hikairo was not consulted .

(d) Has this management had any detrimental effects on waterways or on Rohe Pōtae Māori's relationship with waterways, particularly in relation to the management of sewers and borough council management of waterways?

73. The claimants submit that Crown and Crown agent management has had detrimental effects on all of the above as set out in the evidence of the Ngāti Hikairo in particular the evidence of Frank Thorne, Pipi Barton, Jack Cunningham, Gerrit Vantol and Whetu Simon, Mere Gilmore, Mere Roberts, Manaoterangi Forbes and Tom Moke.

20.16 What are the current environmental management regimes in respect of waterways and how are Rohe Pōtae Māori included?

74. To central government agencies and to local government and in some cases to mandated iwi authorities, in respect of the Waipā awa and its tributaries for example, which excludes Ngāti Hikairo and in respect of which Ngāti Hikairo was not consulted

What is the current environmental state of waterways in the district?

75. The claimants submit that there has been a general failure to recognise and work with the mana whenua of Ngāti Hikairo in relation to environmental management of the waterways and as a result of a variety of Government initiatives, land confiscation, pollution and they have been decimated.

20.17 Have legislation, policies and practices of the Crown contributed to environmental degradation of non-commercial fisheries and habitats in the inquiry district? If so, how? In particular:

76. The claimants submit that the once abundant sea, together with rich freshwater and forest life have been decimated as a result of a variety of Government initiatives, land confiscation, pollution and a general failure to recognise and work with the mana whenua of Ngāti Hikairo and had a corresponding effect on Ngāti Hikairo's relationship thereto.

20.18 Have Rohe Pōtae Māori expressed concern about the degradation of non-commercial fisheries and marine and freshwater habitats? If so, has the Crown's response been adequate?

77. The claimants submit that they have expressed concern in many fora about the environmental degradation of the waterways. In evidence Gerrit Vantol and Whetu Simon presented the report co-written with NIWA and showing evidence of those Ngāti Hikairo with long associations with the area and their observations about the decline in the health of the non-commercial fisheries and marine and freshwater habitats.

20.19 How has the Crown delegated authority concerning the management of noncommercial fisheries? In particular:

(a) To what bodies?

78. There is provision for gazetted kaitiaki under the Fisheries (Kaimoana Customary Fishing) Regulations 1998. However the claimants submit that this is under the Crown authority not Ngāti Hikairo operating alongside as a Treaty partner.

(b) What provision was made for Rohe Pōtae Māori interests?

79. There is provision for gazetted kaitiaki under the Fisheries (Kaimoana Customary Fishing) Regulations 1998. However the

claimants submit that this is under the Crown authority not Ngāti Hikairo operating alongside as a Treaty partner.

20.20 What are the current environmental management regimes in place in relation to noncommercial marine and freshwater species and their habitats in the district and how are Rohe Pōtae Māori included?

What is the current environmental state of noncommercial marine and freshwater species and their habitats in the district? In particular, with relation to:

- (a) Maui's dolphin?**
- (b) Tuna?**
- (c) Peraro?**
- (d) Ngorongoro?**
- (e) Kāeo?**

80. The claimants submit that they have expressed concern in many fora about the environmental degradation of the waterways. In evidence Gerrit Vantol and Whetu Simon presented the report co-written with NIWA and showing evidence of those Ngāti Hikairo with long associations with the area and their observations about the decline in the health of the non-commercial fisheries and marine and freshwater habitats.

21. Moana Takutai Moana

21.1 How did Rohe Pōtae Māori exercise mana and rangatiratanga over the takutai moana and harbours of Te Rohe Pōtae in 1840?

81. Ngāti Hikairo submit that its tikanga are as set out in evidence throughout *Te Maru-Ō-Hikairo* (#A98) and linked to its whakapapa, history and association with, the moana the harbours and the associated resources, establishes its mana motuhake, mana whenua, and mana whakahaere in its rohe.

21.2 Did the Treaty guarantee Rohe Pōtae Māori the full, exclusive and undisturbed possession of takutai moana and, if so, did Rohe Pōtae Māori ever extinguish or waive this protection?

82. The Crown was under an obligation pursuant to the Treaty to actively protect the the full, exclusive and undisturbed possession of takutai moana. the evidence of the Ngāti Hikairo in particular the evidence of Frank Thorne, Jack Cunningham, Gerrit Vantol and Whetu Simon, Manaoterangi Forbes and Tom Moke is that Ngāti Hikairo never extinguish or waived this protections.

**21.3 Did the Crown assume control and ownership over takutai moana in Te Rohe Pōtae through legislation from 1854 onwards?
In particular:**

(a) Did this assertion of control and/or ownership breach the duties relating to takutai moana imposed on the Crown by the Treaty?

83. The claimants say the Crown has assuming control and ownership over takutai moana breached its duties in respect of the duty to actively protect the the full, exclusive and undisturbed possession of takutai moana.

(b) Did Rohe Pōtae Māori consent to Crown control and/or ownership of takutai moana?

84. The claimants did not consent to Crown control and/or ownership of takutai Moana as evidenced by Ngāti Hikairo's continued ahi kaa in the rohe and kaitiakitanga of te takutai moana.

(c) Did Rohe Pōtae Māori suffer prejudice as a result of Crown control and/or ownership of takutai moana?

85. The claimants submit they have suffered prejudice.

If so, what was the extent of that prejudice?

86. The once abundant coastal area and sea have fed the physical and spiritual needs of Ngāti Hikairo for hundreds of years. These have been decimated as a result of a variety of Government initiatives, land confiscation, pollution and a general failure to recognise and work with the mana whenua of Ngāti Hikairo.

21.5 Has the Crown consulted Rohe Pōtae Māori regarding:

(b) The monitoring and restoration of marine species to sustainable levels?

Harbours

87. The claimants submit there has been no consultation in that regard other than the limited report prepared with NIWA.

21.6 What is the nature and extent of Rohe Pōtae Māori relationships with harbours?

88. Ngāti Hikairo submit that its tikanga are as set out in evidence throughout *Te Maru-Ō-Hikairo* (#A98) and linked to its whakapapa, history and association with, the moana, the harbours and the associated resources, establishes its mana motuhake, mana whenua, and mana whakahaere in its rohe.

21.7 Does the Treaty impose any obligations on the Crown in relation to Rohe Pōtae Māori relationships with harbours?

89. The Crown was under an obligation pursuant to the Treaty to actively protect the the harbours as a taonga of Ngāti Hikairo. The Crown has seriously failed in this regard as set out in the evidence of the Ngāti Hikairo in particular the evidence in particular of Frank Thorne, Jack Cunningham, Gerrit Vantol and Whetu Simon.

21.8 Has the Crown recognised and protected Rohe Pōtae Māori relationships and interests regarding harbours, lands and waters?

90. The claimants submit that this has not occurred.

If so, how? What Rohe Pōtae Māori representation has the Crown provided for on bodies or authorities dealing with harbours?

91. No direct representation has been provided for Ngāti Hikairo, except as the iwi engages with the wider Forum.

21.9 Has environmental legislation provided adequate protection of harbours from pollution and degradation to ensure their economic and cultural value to Rohe Pōtae Māori?

92. The claimants submit that environmental legislation has not provided adequate protection of harbours from pollution and degradation to ensure their economic and cultural value to Ngāti Hikairo.

25.7 Has the Crown provided Rohe Potae Maori with an adequate standard of healthcare?

93. The claimants submission is that the Crown has failed to provide Ngati Hikairo with adequate access to healthcare and an adequate standard of healthcare. Ngati Hikairo as an iwi generally has poor health and the evidence of Hinga Whiu and Dr Burton was that Ngati Hikairo people generally die younger than the rest of the community and suffer high rates of preventable diseases such as smoking related diseases.

25.13 To what extent is the Crown obliged to address socio-economic factors that have affected the health and well-being of Rohe Potae Maori? In particular, in relation to:

(a) Poverty?

(b) Housing?

(c) Employment?

(d) Loss of land, waterways and a healthy and sustainable environment?

94. The claimants adopt the generic submissions and further submit that the root cause of Ngati Hikairo's poor health and wellbeing in terms of poverty, housing, employment and loss of land and resources is the Crown's failure to ensure they retained a sufficient economic and land base to sustain the people. The Crown is obliged and has failed to uphold its obligations to the iwi under Te Tiriti and Te Pitihana.

25.16 What prejudice, if any, did Rohe Potae Maori and their tupuna experience as a result of Crown acts and omissions regarding health? Who among Rohe Potae Maori were affected?

95. The claimants adopt the generic submissions and further submit that Ngati Hikairo as an iwi have experienced poor health as set out in claimant evidence. This has been prejudicial to the iwi as they have struggled to survive with few economic resources and with aspects of their culture such as te reo stripped away by Crown actions and inactions.

DATED at Auckland this 22nd day of October 2014



Dominic Wilson / Bernadette Arapere / Robyn Gray

Counsel for the Wai 1439, Wai 2351, Wai 2352, Wai 2353, Wai 1112, and Wai 1113 Claimants